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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2009-043

SERGIO BETANCOURT, Jr.
13655 Saratoga Place
Chino, CA 91710

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about January 8, 2009, the Respiratory Care Board of California (Board) received a complete application for a Respiratory Care Practitioner License from SERGIO BETANCOURT, Jr. (Respondent). On or about October 24, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about July 2, 2009. On or about August 26, 2009, Respondent requested a hearing to contest the denial of his application for licensure.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

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1 8. Section 3752 of the Code states,

2 “A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge of any offense which substantially relates to
4 the qualifications, functions, or duties of a respiratory care practitioner is
5 deemed to be a conviction within the meaning of this article. The board
6 shall order the license suspended or revoked, or may decline to issue a
7 license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing the
11 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
12 or setting aside the verdict of guilty, or dismissing the accusation,
13 information, or indictment.”

14 9. Section 3752.6 of the Code states:

15 “For purposes of Division 1.5 (commencing with Section 475), and
16 this chapter, a crime involving sexual misconduct or attempted sexual
17 misconduct, whether or not with a patient, shall be considered a crime
18 substantially related to the qualifications, functions, or duties of a
19 respiratory care practitioner.”

20 10. Section 3754 of the Code states:

21 “The board may deny an application for, or issue with terms and conditions,
22 or suspend or revoke, or impose probationary conditions upon, a license in any
23 decision made after a hearing, as provided in Section 3753.”

24 11. California Code of Regulations, title 16, section 1399.370, states, in
25 pertinent part:

26 “For the purposes of denial, suspension, or revocation of a license, a
27 crime or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a respiratory care practitioner, if it

1 evidences present or potential unfitness of a licensee to perform the
2 functions authorized by his or her license or in a manner inconsistent with
3 the public health, safety, or welfare. Such crimes or acts include but are not
4 limited to those involving the following:

5 (a) Violating or attempting to violate, directly or indirectly, or
6 assisting or abetting the violation of or conspiring to violate any provision
7 or term of the Act.

8 “...

9 (e) Conviction of a crime involving lewd conduct, prostitution or
10 solicitation thereof, or pandering and/or indecent exposure, as defined by
11 the Penal Code.

12 “...”

13 **COST RECOVERY**

14 12. Section 3753.5, subdivision (a) of the Code states:

15 “In any order issued in resolution of a disciplinary proceeding
16 before the board, the board or the administrative law judge may direct any
17 practitioner or applicant found to have committed a violation or violations
18 of law to pay to the board a sum not to exceed the costs of the investigation
19 and prosecution of the case.”

20 13. Section 3753.7 of the Code states:

21 “For purposes of the Respiratory Care Practice Act, costs of
22 prosecution shall include attorney general or other prosecuting attorney
23 fees, expert witness fees, and other administrative, filing, and service fees.”

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1 14. Section 3753.1 of the Code states:

2 “(a) An administrative disciplinary decision imposing terms of
3 probation may include, among other things, a requirement that the
4 licensee-probationer pay the monetary costs associated with monitoring the
5 probation.

6 “...”

7 **FIRST CAUSE FOR DENIAL OF LICENSE**
8 (Conviction of Crimes Substantially Related to the Qualifications,
 Functions, or Duties of a Respiratory Care Practitioner)

9 15. Respondent’s application is subject to denial under section 3750, as
10 defined by section 3750, subdivision (d), and 3752.6 of the Code, and Title 16 of the
11 California Code of Regulations, section 1399.370, in that Respondent has been convicted
12 of crimes substantially related to the qualifications, functions, or duties of a Respiratory
13 Care Practitioner, as more particularly described in paragraphs 16 through 19, below.

14 16. On or about February 16, 2006, Respondent was observed
15 masturbating in an open booth at The Mustang Adult Book Store by a plain clothes
16 detective for the Upland Police Department. Respondent was arrested for a
17 violation of Penal Code section 647 (a) [lewd conduct].

18 17. On or about July 31, 2006, Respondent was charged in the case
19 entitled *People of the State of California v. Sergie Betancourt*, San Bernardino Superior
20 Court Case No. MWV106292, with a violation of Penal Code section 647 (a) [lewd
21 conduct].

22 18. On or about September 6, 2006, Respondent pled guilty to a
23 violation of Penal Code section 647 (a) [lewd conduct], in the case entitled *People of the*
24 *State of California v. Sergie Betancourt*, San Bernardino Superior Court Case No.
25 MWV106292.

26 19. On or about September 6, 2006, the Court sentenced Respondent in
27 Case MWV106292 to one (1) day in County jail, twenty-four (24) months informal
28 probation, undergo an HIV test and attend an AIDS education program.

1 **SECOND CAUSE FOR DENIAL OF LICENSE**

2 (Conviction of a Crime Involving Sexual Misconduct)

3 20. Respondent's application is further subject to denial under section
4 3750, as defined by section 3750, subdivision (d), as defined by California Code of
5 Regulations section 1399.370, subdivision (e), in that he was convicted of a crime
6 involving sexual misconduct, as more particularly described in paragraphs 16 through 19,
7 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters
10 herein alleged, and that following the hearing, the Board issue a decision:

11 1. Denying the application of Respondent for a Respiratory Care
12 Practitioner License;

13 2. Directing Respondent to pay the Respiratory Care Board of
14 California the costs of the investigation and enforcement of this case, and if placed on
15 probation, the costs of probation monitoring; and

16 3. Taking such other and further action as deemed necessary and
17 proper.

18 DATED: November 25, 2009

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20 Original signed by Liane Freels for: _____
21 STEPHANIE NUNEZ
22 Executive Officer
23 Respiratory Care Board of California
24 State of California
25 Complainant

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